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SUPREME COURT OF THE UNITED STATES

**OCTOBER TERM, 1947**

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# No. 502

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FOREMEN'S ASSOCIATION OF AMERICA,
*Petitioner,*

*vs.*

L. A. YOUNG SPRING & WIRE CORPORATION AND NATIONAL LABOR RELATIONS BOARD

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**PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA.**

---

WALTER M. NELSON,
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SUPREME COURT OF THE UNITED STATES

**OCTOBER TERM, 1947**

# No. 502

FOREMEN'S ASSOCIATION OF AMERICA,
*Petitioner,*

*vs.*

L. A. YOUNG SPRING & WIRE CORPORATION AND NATIONAL LABOR RELATIONS BOARD

**PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISRICT OF COLUMBIA.**

Foremen's Association of America, on behalf of itself and its Chapter No. 155, prays that a writ of certiorari issue to review the order of the United States Court of Appeals for the District of Columbia entered on October 29, 1947, denying your Petitioner's motion for leave to intervene and for rehearing in the cause entitled *L. A. Young Spring & Wire Corporation, Petitioner,* v. *National Labor Relations Board, Respondent* (No. 9397, October Term, 1947), and to review the judgment of that Court entered in said cause on September 29, 1947.

## Opinion Below

The order of the United States Court of Appeals for the District of Columbia denying Petitioner leave to intervene (R. 235) was not accompanied by any opinion. The opinion

of the Court accompanying its judgment (R. 226-9) is reported at 163 F. (2d) 905.

## Jurisdiction

The judgment of the United States Court of Appeals for the District of Columbia was entered on September 29, 1947, and its order denying Petitioner leave to intervene was entered on October 29, 1947. The jurisdiction of this Court is invoked under the provisions of Section 240 of the Judicial Code (28 U.S.C.A. § 347). In the event the Court determines that it does not have jurisdiction under the foregoing provision, the jurisdiction of this Court is invoked under the provisions of Section 262 of the Judicial Code (28 U.S.C.A. § 377). *Re 620 Church Street Bldg. Corp.*, 299 U. S. 24, 57 S. Ct. 88, 81 L. Ed. 16, rehearing denied 299 U. S. 623, 57 S. Ct. 229, 81 L. Ed. 458. See page 12, *infra*.

## Questions Presented

1. Whether it was an abuse of discretion for the United States Court of Appeals for the District of Columbia to deny Petitioner's motion to intervene, which was made after the Court rendered its judgment, where, as here, the rights of Petitioner and its members were directly and adversely affected by the Court's judgment, such rights could not be preserved in any other proceeding, neither of the parties to the proceeding desired or were in a position to present Petitioner's position to the Court on rehearing and Petitioner could not reasonably have moved to intervene at an earlier stage of the proceedings.

2. Whether Sections 2(3), 2(11) and 14(a) of the National Labor Relations Act, as amended by Section 101 of the Labor Management Relations Act, 1947, (29 U.S.C. sections 152 (3, 11), 164(a)), infringe on the rights guaran-

teed to Petitioner and its members by the First and Fifth Amendments to the Constitution.

3. Whether Section 103 of the Labor Management Relations Act, 1947 (P.L. No. 101, 80th Cong., 1st Sess., Ch. 120) requires that a certification of representatives under the National Labor Relations Act, made prior to the enactment of the Labor Management Relations Act, 1947, be given effect for a period of one year after it is recognized by the employer or at least until one year after the effective date of the Labor Management Relations Act, 1947.

## Statutes Involved

The National Labor Relations Act (Act of July 5, 1935, 49 Stat. 449, 29 U. S. C. 151, *et seq.*) as amended by Labor Management Relations Act, 1947 (P.L. No. 101, 80th Cong., 1st Sess., Ch. 120) provides in part as follows:

"Sec. 2. When used in this Act——

* * * * * * *

"(3) The term 'employee' shall include any employee * * * but shall not include * * * any individual employed as a supervisor * * *.

* * * * * * *

"(11) The term 'supervisor' means any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment."

Section 103 of the Labor Management Relations Act, 1947 (*supra*) provides as follows:

"No provisions of this title shall affect any certification of representatives or any determination as to

the appropriate collective-bargaining unit, which was made under section 9 of the National Labor Relations Act prior to the effective date of this title until one year after the date of such certification or if, in respect of any such certification, a collective-bargaining contract was entered into prior to the effective date of this title, until the end of the contract period or until one year after such date, whichever first occurs."

## Statement

Foremen's Association of America is a voluntary association of supervisory employees. It maintains chapters in various localities and engages in collective bargaining (R. 187-9). It is not affiliated with any other labor organization.[1] Chapter No. 155 of the Foremen's Association of America is a labor organization admitting to membership supervisory employees of the L. A. Young Spring & Wire Corporation at its Los Angeles plant (R. 39, 195).[2]

On a petition duly filed by Petitioner (R. 180-1), the National Labor Relations Board on January 8, 1946, issued a Decision and Direction of Election[3] finding, *inter alia*, that all foremen and assistant foremen in the production and maintenance division of L. A. Young Spring & Wire Corporation's Los Angeles plant constitute an appropriate bargaining unit and directing an election among such employees (R. 194-207, 39-40). The Board's action was taken after a hearing in which Petitioner participated fully (R. 194; 55-6, 75-77, 82-84, 95-100, 115, 118, 120-22, 123-4, 127-9, 132-3, 134-5, 136-44, 146). An election by secret ballot having been conducted and Petitioner having won such election the Board, on February 13, 1946, certified Petitioner as

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[1] See *Packard Motor Car Company* v. *National Labor Relations Board*, 330 U. S. 485, 67 S. Ct. 789, 91 L. Ed., No. 10.

[2] The term "Petitioner" is used herein to designate Foremen's Association of America and its Chapter No. 155 (R. 232).

[3] *Matter of L. A. Young Spring & Wire Corporation*, 65 N.L.R.B. 298.

the exclusive representative of the employees in the aforementioned appropriate unit for the purposes of collective bargaining (R. 207-8).

On August 26, 1946, the Board, acting on charges duly filed by Petitioner, issued a Decision and Order [4] finding that the Company had refused to bargain collectively with Petitioner and ordering the Company to cease and desist from engaging in specified unfair labor practices and to bargain collectively concerning wages and other conditions of employment with Petitioner (R. 36-48; 226). Petitioner participated in these proceedings as a party (R. 37-8).

The Company declined to comply with the Board's order and petitioned the United States Court of Appeals for the District of Columbia to review and set aside the order on the ground that its supervisory personnel were not employees within the meaning of that term as used in Section 2(3) of the National Labor Relations Act and so were not covered by the Act (R. 2-13, 226). In answering, the Board denied the Company's contention and asked the Court to enter a decree directing the enforcement of its order (R. 14-19, 226). The Court heard argument on the matter on May 28, 1947 (R. 226).

On June 23, 1947, the Labor Management Relations Act, 1947, was enacted, effective sixty days thereafter (P. L. No. 101, 80th Cong., 1st Sess., Ch. 120, Sec. 104). Among other things, this statute enacted into law the provisions quoted above at pages 3 and 4.

On September 29, 1947, the Court entered its judgment in this matter, setting aside the Board's order (R. 230), and handed down its opinion (R. 226-229; 163 F. (2d) 905). In its opinion the Court stated that, except for intervening legislation, the *Packard* case (*supra*, note 1) would imperatively require it to decree the enforcement of the

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[4] *Matter of L. A. Young Spring & Wire Corporation* and *Foremen's Association of America, Chapter No. 155*, 70 N.L.R.B. 868.

Board's order (R. 227; 163 F. (2d), 906). However, after examining Sections 2(3) and 2(11) of the National Labor Relations Act, as amended by the Labor Management Relations Act, 1947 (*supra*, p. 3), and finding that it was its duty to dispose of the case on the law as it now stands, the Court concluded that it must set the order aside since it "would operate in future in a manner contrary to the amended statute" (R. 227-9; 163 F. (2d), 906-7).

On October 14, 1947, Petitioner filed a timely motion for leave to intervene and for rehearing in the Court below (R. 231-4). In its motion Petitioner pointed out its relationship to Chapter No. 155 and its authority to file the motion. It indicated its apparent, direct and vital interest in the application and validity of the Labor Management Relations Act, 1947. It made clear that although the Board fully represented its position at the inception of the proceeding, since the enactment of the Labor Management Relations Act, 1947, neither of the parties could represent its position, since the Board was compelled to accept the validity of the new enactment. It urged, therefore, that it be permitted to intervene and to be heard on the constitutionality of Sections 2(3), 2(11) and 14(a) of the National Labor Relations Act, as amended by the Labor Management Relations Act, 1947, and the interpretation and application of Section 103 of the latter Act. Nevertheless, on October 29, 1947, the Court passed an order, without expression of opinion, denying Petitioner's motion for leave to intervene (R. 235).

## Specification of Errors to Be Urged

The United States Court of Appeals for the District of Columbia erred:

1. In refusing to permit Petitioner to intervene in the proceedings below.

2. In refusing to grant Petitioner a rehearing in the proceedings below.

3. In setting aside the Board's order directing the Company to bargain collectively with Petitioner as the exclusive representative of foremen and assistant foremen in the production and maintenance division of the Company's Los Angeles plant.

4. In failing to find that Sections 2(3), 2(11) and 14(a) of the National Labor Relations Act, as amended by Labor Management Relations Act, 1947, deprive Petitioner and its members of rights guaranteed by the First and Fifth Amendments to the Constitution.

5. In failing to find that Section 103 of Labor Management Relations Act, 1947, preserves the validity of a certification as exclusive representative of supervisory employees for a period of one year after such certification is recognized by the employer.

6. In failing to find, alternatively to the preceding paragraph, that Section 103 of Labor Management Relations Act, 1947, preserves the validity of a certification as exclusive representative of supervisory employees for a period of one year after the effective date of such Act where the employer has refused and continues to refuse to recognize such a valid prior certification on the effective date of such Act.

## Reasons for Granting the Writ

This case presents important questions concerning (1) the constitutional validity of the provisions of the National Labor Relations Act, as amended, denying the benefits of the Act to "supervisors", and (2) the interpretation and application of Section 103 of the Labor Management Relations Act, 1947, which delays the effectiveness of the provisions of that Act in certain cases. These are questions

which have not been, but should be, promptly settled by this Court.

It was not until March 10, 1947, over eleven years after the passage of the National Labor Relations Act, that this Court finally determined that "supervisors" were employees within the meaning of that Act and entitled to its benefits. *Packard Motor Car Company* v. *National Labor Relations Board*, 330 U. S. 485, 67 S. Ct. 789, 91 L. Ed., No. 10. During a large part of this period Petitioner and other labor organizations of supervisory employees fought a long, expensive and debilitating legal battle for their very existence. With this Court's decision in the *Packard* case that battle was won. A few months later, however, with the passage of the Labor Management Relations Act, 1947, Congress attempted restrictive, discriminatory legislation to effectively eliminate Petitioner and similar labor organizations from the labor scene. Petitioner challenges this attempt at "legalized" murder. Its challenge, to be meaningful, however, must be heard promptly. Likewise, stability of labor relations and the removal of burdens and obstructions to interstate commerce, the very purposes of the National Labor Relations Act, require that these questions be promptly and authoritatively determined.

The lower Court has not seen fit to hear argument and decide the vital questions as to the validity and construction of the labor relations statutes which Petitioner has drawn into issue; at best it assumed the validity of the provisions in question and a construction unfavorable to Petitioner.

The lower Court's denial of Petitioner's motion to intervene constituted a flagrant abuse of discretion. It is apparent that Petitioner had a direct and immediate interest in the enforcement of the Board's order requiring the Company to bargain collectively with it, and that Petitioner's interest was adversely affected by the judgment of the

Court setting aside the Board's order. Petitioner initiated both the representation and unfair labor practice proceedings before the Board and participated in the hearings and other proceedings before the Board as a party. These proceedings culminated in the issuance of an order by the Board directing the Company to bargain with Petitioner. When this order was brought before the lower Court for review on the Company's petition to set the order aside Petitioner, although still directly and immediately interested, did not intervene since the Board petitioned the Court to enforce the order and was representing fully Petitioner's position.

It was not until the Court set aside the Board's order on the basis of the Labor Management Relations Act, 1947, a statute enacted after the case had been briefed and argued, that the necessity for intervention by Petitioner arose. It then became apparent that the Board could no longer represent Petitioner's position with respect to the new statute since the Board was compelled to accept the statute as a valid enactment. Further, since the Court was of the opinion that the Labor Management Relations Act, 1947, was decisive on the question of the enforcement of the order, and since Petitioner had no other forum in which to protect its rights, it promptly moved for intervention and rehearing.

In similar proceedings persons with comparable interests have been permitted to intervene. *Edward G. Budd Mfg. Co.* v. *National Labor Relations Board,* No. 301, U. S. S. Ct., 16 L. W. 3191; *International Union* v. *Eagle Picher M. & S. Co.,* 325 U. S. 335, 65 S. Ct. 1166, 89 L. Ed. 1689; *Consolidated Edison Co.* v. *National L. R. Bd.,* 305 U. S. 197, 59 S. Ct. 206, 83 L. Ed. 126. See also *Fishgold* v. *Sullivan Drydock & Repair Corp.,* 328 U. S. 275, 66 S. Ct. 1105, 90 L. Ed. 1230; *Williams* v. *Morgan,* 111 U. S. 684, 4 S. Ct. 638, 28 L. Ed. 559. The fact that the motion for

intervention was filed after judgment in this case affords no basis for its denial in view of the course of the proceedings as indicated above. Under all the circumstances the lower Court's denial of the motion to intervene was an abuse of discretion.

Unless this Court grants the writ prayed for important rights of Petitioner and its members will have been extinguished without affording Petitioner an opportunity to be heard. Moreover, important questions as to the validity and construction of a new and important Federal statute will be left unresolved by this Court. The fact that Petitioner was not in a strict sense a "party" to the proceedings in the lower Court is not decisive. It is true that this Court has stated the general rule to be that an order denying leave to intervene is not appealable except where he who seeks to intervene has a direct and immediate interest in a *res* which is the subject of the suit. *United States* v. *California Co-op. Canneries,* 279 U. S. 553, 49 S. Ct. 553, 73 L. Ed. 838. In an earlier case (*Credits Commutation Co.* v. *United States,* 177 U. S. 311, 20 S. Ct. 636, 44 L. Ed. 782) this Court stated the rationale of the exception as follows:

> " 'It is doubtless true that cases may arise where the denial of a right of a third party to intervene therein would be a practical denial of certain relief to which the intervener is fairly entitled, and which he can only obtain by an intervention. Cases of this sort are those where there is a fund in court undergoing administration to which a third party asserts some right which will be lost in the event that he is not allowed to intervene before the fund is dissipated. In such cases an order denying leave to intervene is not discretionary with the chancellor, and will generally furnish the basis for an appeal, since it finally disposes of the intervener's claim by denying him all right to relief.' " (177 U. S., 315-316, 44 L. Ed., 785.)

We submit that the reasons for creating the exception sanctioned by this Court are applicable in like measure to cases in which a *res* is not the subject of the suit. The decisive considerations are whether the movant for intervention will be bound by the judgment of the lower Court, that is, foreclosed from securing relief in any other forum, and whether he is inadequately represented by other parties before the court. In re *Dolcater*, 106 F. (2d) 30 (C. C. A. 2, 1939); *Mack* v. *Passaic Nat. Bank & Trust Co.*, 150 F. (2d) 474 (C. C. A. 3, 1945); *Central Trust Co.* v. *Chicago, R. I. & P. R. Co.*, 218 Fed. 336 (C. C. A. 2, 1914); *United States* v. *Radice*, 40 F. (2d) 445 (C. C. A. 2, 1930); *Demulso Corporation* v. *Tretolite Co.*, 74 F. (2d) 805 (C. C. A. 10, 1934); *Zeitinger* v. *Hargadine-McKittrick Dry Goods Co.*, 244 Fed. 719 (C. C. A. 8, 1917); *Federal Rules of Civil Procedure*, Rule 24 (a) (2), 28 U. S. C. A. following section 723c. In the instant case it is plain that Petitioner has no other forum in which to secure the relief it sought below (National Labor Relations Act, as amended, 29 U. S. C. 160 (f)) and was not adequately represented in the Court below by the parties to the proceedings, especially since the Court below decided the case adversely to the Petitioner herein and the Board, without briefs or argument on what it held to be the controlling effect of intervening legislation and the Board, necessarily assuming the validity of such legislation, did not move for rehearing. Under these circumstances, and particularly where Petitioner was a party to the proceedings before the Board, (*In re Rose*, 86 F. (2d) 69 (C. C. A. 9, 1936)), the order denying intervention should be held appealable and Petitioner should be found to have standing to appeal.

The fact that Petitioner was not in a strict sense a "party" in the Court below may also be urged as a reason why this Court does not have jurisdiction to entertain this petition under Section 240 of the Judicial Code (28 U. S.

C. A. 347). For the reasons set forth above we believe the Court does have jurisdiction to entertain this petition under such provision. Cf. *Tucker* v. *Alexandroff*, 183 U. S. 424, 46 L. Ed. 264; *United States* v. *Terminal R. Asso.*, 236 U. S. 194, 59 L. Ed. 535. But even if this were not the case, the Court nevertheless has jurisdiction to grant the writ prayed for under the provisions of Section 262 of the Judicial Code (28 U. S. C. A. 377). *Re 620 Church Street Bldg. Corp.*, 299 U. S. 24, 57 S. Ct. 88, 81 L. Ed. 16, rehearing denied 299 U. S. 623, 57 S. Ct. 229, 81 L. Ed. 458. For the jurisdiction of this Court to issue a writ to review at least the first question presented by this petition is essential to the preservation of its appellate jurisdiction over the remaining questions presented by the petition.

## Conclusion

For the foregoing reasons, it is respectfully submitted that this petition for a writ of certiorari should be granted.

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December 29, 1947.

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IN THE

# SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1947

## No. 502

FOREMAN'S ASSOCIATION OF AMERICA,
*Petitioner,*

vs.

L. A. YOUNG SPRING & WIRE CORPORATION and NATIONAL LABOR RELATIONS BOARD

## BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

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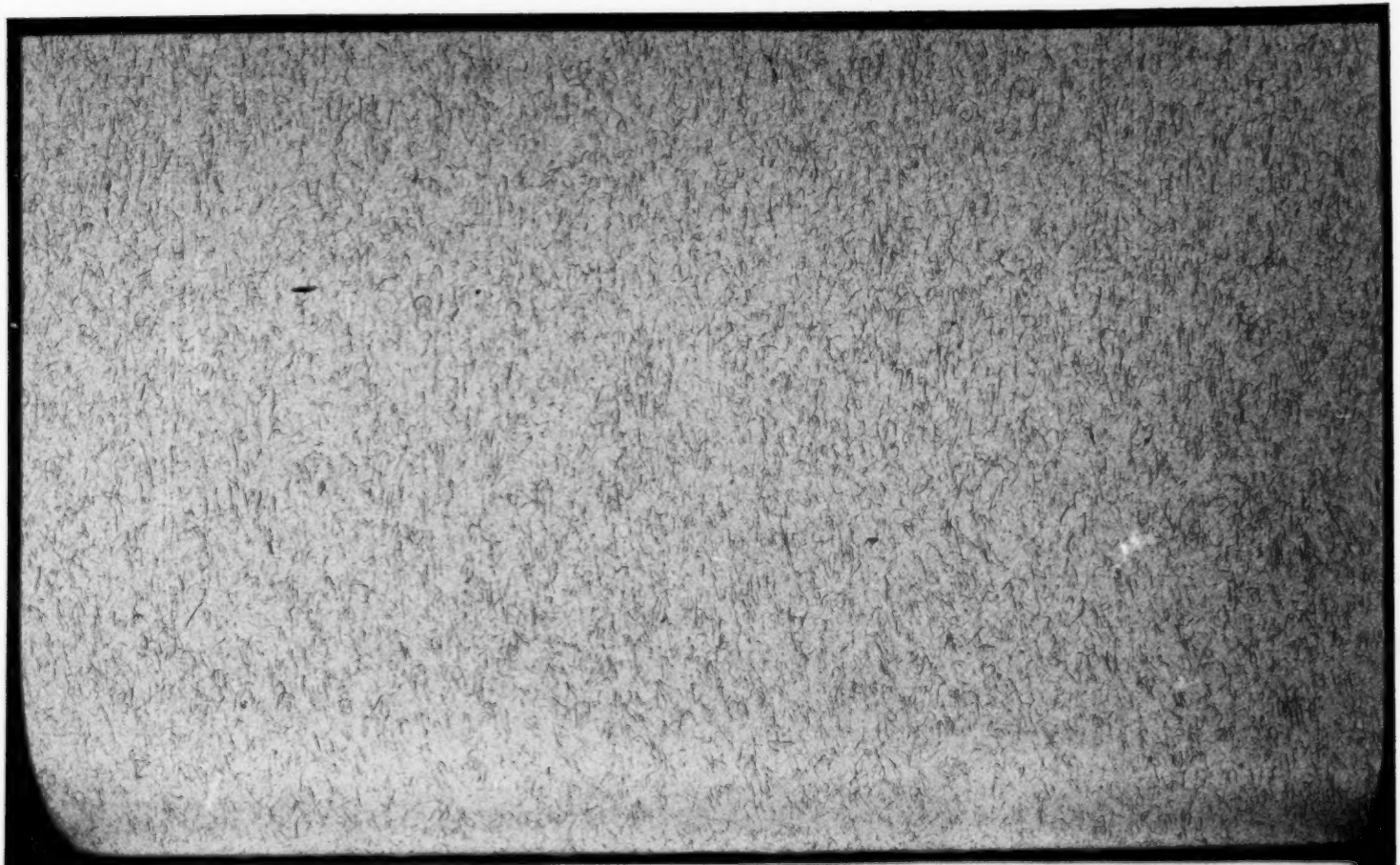

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FOREMAN'S ASSOCIATION OF AMERICA,
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## BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

### *OPINION BELOW*

The United States Court of Appeals for the District of Columbia denied petitioner's motion for leave to intervene in the suit of *L. A. Young Spring & Wire Corporation v. National Labor Relations Board*, 163 F. (2d) 905 (App. D.C., 1947), (No. 9397, October Term, 1947).

## *QUESTION PRESENTED*

Whether the United States Court of Appeals for the District of Columbia abused its discretion by denying petitioner's motion to intervene in an action brought by *L. A. Young Spring & Wire Corporation v. National Labor Relations Board* seeking to have a Board order against the Corporation set aside, where the petitioner's motion was not made until after judgment, but could have been made at any time prior thereto, and petitioner further sought to inject new issues into the aforesaid action between the Corporation and the National Labor Relations Board.

## *STATEMENT*

L. A. Young Spring & Wire Corporation petitioned the United States Court of Appeals for the District of Columbia to review and set aside an order of the National Labor Relations Board which directed the Corporation to bargain collectively with the petitioner (R. 2-13). The Board answered and the cause was heard on May 28, 1947 (R. 14-19, 226).

Before judgment, which was rendered September 29, 1947, the Labor Management Relations Act was enacted on June 23, 1947 (R. 230, P.L. No. 101, 80th Cong., First Sess., CH 120, Sec. 104). Only after judgment had been rendered did petitioner, on October 14, 1947, move for leave to intervene at the same time seeking to inject issues of interpretation and constitutionality of the Labor Management Relations Act into the action (R. 231-4). Petitioner's motion was denied by the United States Court of Appeals for the District of Columbia (R. 235).

## ARGUMENT

In *Brotherhood of Railroad Trainmen v. Baltimore & Ohio Railroad Co.*, 91 L. Ed. 1301 (Adv. Ops.), this Court said:

> "Our jurisdiction to consider an appeal from an order denying intervention thus depends upon the nature of applicant's right to intervene. If the right is absolute, the order is appealable and we may judge it on its merits. But if the matter is one within the discretion of the trial court and if there is no abuse of discretion, the order is not appealable and we lack power to review it. In other words, our jurisdiction is identified with the necessary incidents of the right to intervene in each particular instance."

The sole question presented for review by this Court is whether or not the Court of Appeals for the District of Columbia abused its discretion in denying petitioner's application for intervention. *Cameron v. President and Fellows of Harvard College*, 157 F. (2d) 993, (CCA 1, 1946).

In *United States v. California Co-op Canneries*, 279 U.S. 553, 49 Sup. Ct. 553, 73 L. Ed. 838, this Court stated that it was a "settled rule of practice that intervention will not be allowed for the purpose of impeaching a decree already made." (73 L. Ed. 841; 279 U.S. 556). Moreover, it has frequently been said that petitions for intervention, after a decree has been rendered, are very unusual and are seldom granted. *Baltimore Trust Co. v. Interocean Oil Co.*, 30 F. Supp 484 (D.C. Md., 1939), and cases cited therein.

Despite the petitioner's statement to the contrary (p. 2 of petitioner's petition), it is obvious that application for leave to intervene could have been made before judgment in this

cause either before or after the Labor Management Relations Act of 1947 was enacted (p. 5 of petitioner's petition). Certainly, it is difficult to conceive how a court could be said to have abused its discretion in refusing to allow one to come in and inject new issues in a case after judgment has been rendered. Nor has the petitioner cited any authority to sustain its contention that the denial of such an application constitutes an abuse of discretion.

It is a well established principle that intervention will not be allowed where it would unduly delay or prejudice the adjudication of the issues between the original parties. 6. Cyclopedia of Federal Procedure, Sec. 2388. Here, the controversy between L. A. Young Spring & Wire Corporation and the National Labor Relations Board has terminated in a judgment. To permit petitioner to intervene at this stage would obviously conflict with this principle.

Since petitioner has failed to show an abuse of discretion of the Court of Appeals for the District of Columbia, this Court lacks jurisdiction to entertain this appeal. *United States v. California Co-op Canneries,* 279 U.S. 553, 49 Sup. Ct. 553, 73 L. Ed. 838; *Missouri-Kansas Pipe Line Company v. United States,* 108 F. (2d) 614 (CCA 3, 1939) Cert. Den. 309 U.S. 687, 60 Sup. Ct. 887, 84 L. Ed. 1030; *Re Leaf Tobacco Board of Trade,* 222 U.S. 578, 32 Sup. Ct. 833, 56 L. Ed. 323.

## *CONCLUSION*

For the above reasons, it is respectfully submitted that petitioner's petition for a writ of certiorari should be denied.

BETHEL B. KELLEY,
*Attorney for* L. A. Young Spring & Wire Corporation.

Dated: January 21, 1948.

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# In the Supreme Court of the United States

OCTOBER TERM, 1947

No. 502

FOREMAN'S ASSOCIATION OF AMERICA, PETITIONER

*v.*

L. A. YOUNG SPRING & WIRE CORPORATION AND NATIONAL LABOR RELATIONS BOARD

*ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA*

## MEMORANDUM FOR THE NATIONAL LABOR RELATIONS BOARD

### OPINIONS BELOW

The opinion of the court below accompanying the decision setting aside the Board's order (R. 226–229) is reported at 163 F. 2d 905. The order denying petitioner leave to intervene (R. 235) was not accompanied by an opinion. The decision and order of the National Labor Relations Board (R. 36–51) is reported in 70 N. L. R. B. 868; and the decision and direction of election (R. 194–207) is reported in 65 N. L. R. B. 298.

### JURISDICTION

The judgment of the court below was entered on September 29, 1947 (R. 230), and its order denying petitioner leave to intervene was entered on October 29, 1947 (R. 235). The petition for a writ of certiorari was filed on December 29, 1947. The jurisdiction of this Court is invoked under Section 240 of the Judicial Code (28 U. S. C. 347) and Section 262 of the Judicial Code (28 U. S. C. 377).

### STATUTES INVOLVED

The pertinent provisions of the National Labor Relations Act (49 Stat. 449, 29 U. S. C. 151, *et seq.*) and the Labor Management Relations Act, 1947 (Public Law No. 101, 80th Cong., 1st Sess., c. 120, effective August 22, 1947) are set forth in the Appendix, *infra,* pp. 17–22.

### QUESTIONS PRESENTED

1. Whether the denial by the court below of a motion to intervene, made by a labor organization in accordance with Rule 24 of the Federal Rules of Civil Procedure, was properly within the court's discretion, where the court, without affording any of the parties a hearing on the issue, had held the order of the Board requiring an employer to bargain with the labor organization unenforceable because of the intervening enactment of the Labor Management Relations Act, 1947.

2. Whether Sections 2 (3), 2 (11) and 14 (a) of the National Labor Relations Act, as amended

by the Labor Management Relations Act, 1947, which exclude individuals employed as supervisors from the term "employee" as used in the Act, violate the First and Fifth Amendments to the Constitution of the United States.

3. Whether Section 103 of the Labor Management Relations Act, 1947, which provides that the amendments of the National Labor Relations Act shall not affect any certification of representatives made prior to the effective date of the amendments until one year after the date of such certification, is applicable to a certification of representatives of supervisors who subsequent to the amendments are not employees within the meaning of the Act.

## STATEMENT

Upon the usual proceedings under Section 10 of the National Labor Relations Act, the Board issued its findings of fact, conclusions of law, and order (R. 26–51). Briefly summarized, the facts, as found by the Board, are as follows:

L. A. Young Spring and Wire Corporation (hereinafter called the employer), is a Michigan Corporation engaged in the manufacture, distribution and sale of spring wire products, and operates among others a plant located at Los Angeles, California, which plant is the only one involved in the instant case. The employer has conceded that it is engaged in interstate commerce (R. 224–225). Foreman's Association of Amer-

ica, Chapter No. 155, hereinafter called the Association, is a labor organization admitting to membership supervisory employees of the company (R. 39, 195).

Upon a petition duly filed by the Association, the Board conducted the usual investigation and hearing under Section 9 of the Act and issued a decision and direction of election (65 N. L. R. B. 298; R. 194–207), finding that all foremen and assistant foremen employed by the company at its Los Angeles plant were employees within the meaning of the Act and constituted a unit appropriate for collective bargaining. After an election which was won by the Association, the Board, on February 13, 1946, certified the Association as the exclusive bargaining representative of the supervisory employees in the aforementioned unit (R. 207–208).

Thereafter, charges having been filed by the Association, the Board held a hearing and on August 26, 1946, issued its decision and order (70 N. L. R. B. 868; R. 26–51) finding that the employer had violated Section 8 (5) and (1) of the Act by refusing to bargain collectively with the Association. The Board's order directed the employer to cease and desist from the unfair labor practices found and to bargain collectively with the Association (R. 16–17, 47–48). The Association was a party to and participated as such in both the representation and unfair labor practice

proceedings before the Board (R. 20, 21, 37, 38, 194–195, 207, 208).

On October 12, 1946, the employer petitioned the United States Court of Appeals for the District of Columbia to review and set aside the Board's order (R. 2–13, 226). It did not name the Association as a party to the suit (R. 2–13). The Board answered on November 12, 1946, denying the allegations in the company's petition and requesting enforcement (R. 14–19, 226). Oral argument on the issues was heard by the court on May 28, 1947 (R. 226).

The court's decision was handed down on September 29, 1947, 163 F. 2d 905 (R. 226–229), and on the same day it entered its judgment setting aside the Board's order (R. 230). In its opinion the court pointed out that but for the intervening enactment of the Labor Management Relations Act, 1947, it would have been bound by this Court's decision in the *Packard* case.[1] It held, however, that the Congress, by redefining the term "employee" to exclude supervisors (Sec. 2 (3) and (11) of the National Labor Relations Act, as amended, *infra,* pp. 19–20), and by removing any legal compulsion upon employers to bargain with supervisory employees (Sec. 14 (a) of the Act, as amended, *infra,* (p. 22), clearly intended to deny the benefits of the Act to such employees. Therefore, since the

[1] *Packard Motor Car Co.* v. *National Labor Relations Board,* 330 U. S. 485.

Board's order would operate *in futuro* it held that the order should not be enforced (R. 226–229).

On October 14, 1947, the Association moved the court below for leave to intervene and for rehearing (R. 231–234). In its petition, the Association described its participation before the Board in both the representation and unfair labor practice proceedings, asserted that by reason of its certification it had an interest in the determination of the case, and stated that prior to the enactment of the Labor Management Relations Act the Board's interest was the same as the Association's and that it therefore had relied upon the Board to protect its interest. The Association further alleged that upon passage of the amendatory legislation, the Board could no longer protect its interest and only the Association could raise the question of the constitutionality of the amendments and their effect upon the issues in the instant case (R. 231–234). The motion was denied without opinion on October 29, 1947 (R. 235).

## ARGUMENT

The Board believes that the court below properly refused to enforce the order directing the employer to bargain with the Association. The Board is in agreement with the court below that the amendments to the National Labor Relations Act changed the law so that subsequent to August 22, 1947, an employer could not be required to bargain collectively with representatives of super-

visors. Since the Board's order in its entirety was concerned with governing future bargaining relationships between an employer and a representative of supervisors, the enforcement of such an order would be inconsistent with the present policy of the Act. Although no argument was presented on those points, the court below, in denying enforcement of the order, impliedly upheld the constitutionality of the Congressional exemption of supervisors from the coverage of the Act, and the inapplicability of section 103 of the Labor Management Relations Act to the certification in the instant case. Even before the court below issued its decision, the Board had determined that "it would not effectuate the policies of the Act, as amended" to issue any further orders requiring employers to bargain with representatives of supervisors. *Matter of Westinghouse Electric Corp.*, 75 N. L. R. B., No. 1 (September 29, 1947). And subsequent to the decision below the Board has uniformly applied the same rule, citing the court's decision in support of its position. *Matter of Aluminum Company of America*, 75 N. L. R. B., No. 3; *Matter of Columbia Steel Company*, 75 N. L. R. B., No. 4; *Matter of M. P. Moller, Inc.*, 75 N. L. R. B., No. 5; *Matter of Peoples Life Insurance Company of Washington, D. C.*, 75 N. L. R. B., No. 6; *Matter of Tide Water Associated Oil Company*, 75 N. L. R. B., No. 7; and *Matter of The White Motor Company*, 75 N. L. R. B., No. 8.

1. The Association, as the petitioning labor organization in the representation proceedings and the charging labor organization in the unfair labor practice proceeding, was properly a party in both proceedings before the Board (Rules and Regulations of the National Labor Relations Board, series 3, as amended, secs. 202.5, 202.25, 202.34, 203.3, 203.7, 8 F. R. 16047 *et seq.*). As such it participated in the hearings and in oral argument before the Board (R. 194, 37–38, 55–56, 75–77, 82–84, 95–100, 115, 118, 120–122, 123–124, 127–129, 132–133, 134–135, 136–144, 146). The employer in petitioning the court below for review did not make the Association a party to the case (R. 2–13). Nor did the Association ask to be made a party prior to the entry of the judgment below. However, the Association is correct in the assertions made in its petition for certiorari (pp. 6, 9) and in its petition for leave to intervene (R. 232) that prior to the enactment of the Labor Management Relations Act the Board, in its efforts to enforce its order in the public interest, fully represented and defended all interests which the Association had in the proceeding. It is also true as the Association asserts (Pet. 11), that the court below on its own motion set aside the Board's order on the ground that the Labor Management Relations Act precluded enforcement, without affording the parties an opportunity to be heard on this issue. The Board does not question the Association's interest in

the decision of that question, nor does it deny that the court below could properly have permitted the Association to intervene. Such intervention has been permitted by this Court and by the Circuit Courts of Appeals in numerous cases. *Edward G. Budd Mfg. Co.* v. *National Labor Relations Board,* No. 301, October Term, 1947, December 15, 1947; *International Union of Mine Workers* v. *Eagle-Picher Mining and Smelting Co.,* 325 U. S. 335, 338; *Packard Motor Car Company* v. *National Labor Relations Board,* 330 U. S. 485; *Humble Oil and Refining Co.* v. *National Labor Relations Board,* 113 F. 2d 85, 87, 93 (C. C. A. 5). Cf. *Aluminum Ore Co.* v. *National Labor Relations Board,* 131 F. 2d 485, 488 (C. C. A. 7). Had the petition for leave to intervene been granted by the court below, the Association would then have been a proper party in interest to seek review of the court's decision. *International Union of Mine Workers* v. *Eagle-Picher Mining and Smelting Co., supra; International Association of Machinists* v. *National Labor Relations Board,* 311 U. S. 72, 74; *Consolidated Edison Company* v. *National Labor Relations Board,* 305 U. S. 197, 218, 233; *Fishgold* v. *Sullivan Drydock and Repair Corp.,* 328 U. S. 275; *Williams* v. *Morgan,* 111 U. S. 684, 696; *Tucker* v. *Alexandroff,* 183 U. S. 424. This Court has on occasion granted certiorari on the question of the denial by a court below of a

petition for leave to intervene. *Brotherhood of R. R. Trainmen* v. *Baltimore and Ohio R. Co.*, 331 U. S. 519; *Missouri-Kansas Pipe Line Co.* v. *United States*, 312 U. S. 502;[2] *French* v. *Gapen*, 105 U. S. 509; *Leary* v. *United States*, 224 U. S. 567. See also *United States* v. *California Co-op. Canneries*, 279 U. S. 553; *Credits Commutation Co.* v. *United States*, 177 U. S. 311; *New York* v. *New York Telephone Co.*, 261 U. S. 312. Cf. *Ex Parte Cutting*, 94 U. S. 14; *Smith* v. *Gale*, 144 U. S. 509; *Ex Parte Leaf Tobacco Board of Trade*, 222 U. S. 578.

2. The Association contends that sections 2 (3) and (11) and 14 (a) of the Act, as amended, (*infra*, pp. 19–20, 22) are in conflict with the First and Fifth Amendments to the United States Constitution and therefore invalid insofar as they deny the benefits of the National Labor Relations

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[2] It is to be noted that the employer, in its brief in opposition to the petition, cites *Missouri-Kansas Pipe Line Co.* v. *United States*, 108 F. 2d 614 (C. C. A. 3), certiorari denied, 309 U. S. 687, in support of its position that this Court lacks jurisdiction to entertain the appeal. The case cited is not authority for that proposition. In that case the Circuit Court of Appeals dismissed the appeal from the denial by the district court of leave to intervene on the ground that circuit courts lacked jurisdiction, inasmuch as the statute under which the suit was brought required that appeals from the district courts be taken directly to the Supreme Court. When the petitioners then properly applied for review of the district court's decision in this Court the application was granted and after hearing the district court was reversed. 312 U. S. 502.

Act to supervisory employees. There is nothing in the Act which discriminates against the right of supervisors to express opinions, and section 14 (a) specifically reserves to them the right to form and join labor organizations. We therefore see no basis for the contention that the rights guaranteed to the members of the Association by the First Amendment have in any way been prejudiced.

Nor is the exclusion of supervisors from the definition of "employee" so discriminatory as to be an abuse of the legislative power and therefore violative of the Fifth Amendment. Congress can, for its purposes, set up classifications of persons and differentiate in the treatment of the various classes, so long as all persons within each class are treated alike. Thus, Congress, as in the National Labor Relations Act, has in the Social Security Act (42 U. S. C. 409, 1107) exempted and excepted certain classes of persons from the operations of the statute, such as agricultural, charitable, domestic and educational employees and employees of employers employing less than eight persons, and this Court has upheld such differentiation of treatment. *Carmichael* v. *Southern Coal Co.,* 301 U. S. 495, 509–513; *Helvering* v. *Davis,* 301 U. S. 619, 646; *Steward Machine Co.* v. *Davis,* 301 U. S. 548, 584–585. Similarly, exemptions such as administrative, agricultural, and professional employees, outside salesmen, sea-

men, fishermen, and employees of certain small newspapers, under the Fair Labor Standards Act (29 U. S. C. 213) have been held to be valid. See *Mabee* v. *White Plains Publishing Co.*, 327 U. S. 178, 184. It is therefore evident that Congress, by its Constitutional power to regulate commerce, could include supervisors as employees under the Act, *Packard Motor Car Co.* v. *National Labor Relations Board,* 330 U. S. 485, or exclude them as it has by the recent amendments. *Wickard* v. *Filburn,* 317 U. S. 111; *United States* v. *Carolene Products Co.,* 304 U. S. 144; *Velasquez* v. *United States,* 131 F. 2d 916 (C. C. A. 1), certiorari denied, 319 U. S. 770; *Taylor* v. *Brown,* 137 F. 2d 654 (Em. Ct. App.). It is well established that this Court will not inquire into the necessity for such classification if it is not patently irrational and unjustifiable. *McCulloch* v. *Maryland,* 4 Wheat. 316, 422.

When the *Packard* case (*supra*) was being considered, no one argued that the position subsequently taken by the minority of this Court would be unconstitutional. Nor did the Board, in grappling with the problem of the interpretation of "employee" under the original Act, ever consider that any constitutional issue might be involved.[3]

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[3] *Matter of Union Collieries Coal Co.*, 41 N. L. R. B. 961 and 44 N. L. R. B. 165; *Matter of Maryland Drydock Company*, 49 N. L. R. B. 733; *Matter of Packard Motor Car Company*, 61 N. L. R. B. 4. For a detailed report of the

It would therefore seem clear that the petition raises no substantial constitutional question. Nor has there been any conflict of decisions on this point. However, if the Court should regard the constitutional issue as substantial, the Board would not regard this as an inappropriate case for review, even though we believe the decision below to be entirely correct. If the Court decides to review the intervention question, it of course has jurisdiction to determine all questions raised in the petition. *Watts, Watts & Co.* v. *Unione Austriaca, etc.*, 248 U. S. 9; *Donovan* v. *Pennsylvania Co.*, 199 U. S. 279; *Mutual Life Insurance Co.* v. *Phinney*, 178 U. S. 327; *James-Dickinson Farm Mortgage Co.* v. *Harry*, 273 U. S. 119; *Cole* v. *Ralph*, 252 U. S. 286. In a recent case, where the Association, an intervenor, also questioned the constitutionality of the amendments to the National Labor Relations Act affecting supervisors, the Court remanded the case to the Circuit Court of Appeals for the Sixth Circuit to determine "the question of the validity of that part of the order of the National Labor Relations Board which directs the [employer] to cease and desist from discouraging membership in the Foreman's Association of America." *Edward G. Budd Mfg.*

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Board's considerations of the supervisor problem see *Tenth Annual Report of the National Labor Relations Board*, 1945, pp. 30–34.

*Co.* v. *National Labor Relations Board,* No. 301, October Term, 1947, decided December 15, 1947.

3. Although we are not in agreement with the Association that section 103 of the Labor Management Relations Act (*infra,* p. 22) is applicable to the instant case, we do not oppose review of that contention if the Court should determine to grant certiorari because of the constitutional issue. Because the Board, as stated (*supra,* p. 7), has regarded the amendments to the Act as precluding it from requiring employers to bargain collectively with supervisors, it has not applied section 103 to preserve certifications in situations such as this. The Board has stated its policy in this matter as follows:[4]

> Since the issuance of the Intermediate Report herein, the National Labor Relations Act has been amended so as to exclude "any individual employed as a supervisor" from the definition of "employee" contained in the Act. Supervisory employees are therefore now outside the coverage of the Act. We are therefore of the opinion, without considering the merits of the case, that it would not effectuate the policies of the Act, as amended, to require the respondent to take any remedial action in this case, which involves nothing except a refusal to bargain.

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[4] *Matter of Westinghouse Electric Corp.*, 75 N. L. R. B., No. 1.

In describing section 103 of the Labor Management Relations Act, the Association in its petition for certiorari (p. 3) assumes that this section "requires that a certification of representatives under the National Labor Relations Act, made prior to the enactment of the Labor Management Relations Act, 1947, be given effect for a period of one year after it is recognized by the employer." Actually the language of the section speaks in terms of "one year after the date of such certification."

The Board has not as yet had occasion to pass upon the question as to whether the savings provision of section 103 is applicable to cases wherein the certification was issued more than one year prior to August 22, 1947, the effective date of the amendments to the National Labor Relations Act, but because of the employer's refusal to honor the certification, as in the instant case, collective bargaining has not as yet resulted therefrom. But the Board does not believe that issue is present in this case because it regards section 103 as inapplicable in situations involving persons who are no longer employees within the meaning of the Act.

## CONCLUSION

The decision below is correct, and there is no conflict of decisions. If, contrary to our view, the Court should consider the constitutional issue

raised by petitioner to be substantial, the Board, in that event, would not oppose the grant of certiorari.

Respectfully submitted.

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FEBRUARY 1948.

## APPENDIX

The relevant provisions of the National Labor Relations Act (Act of July 5, 1935, 49 Stat. 449, 29 U. S. C., 151 *et seq.*) are as follows:

SEC. 2. When used in this Act—

* * * * *

3. The term "employee" shall include any employee, * * *.

* * * * *

SEC. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection.

SEC. 8. It shall be an unfair labor practice for an employer—

(1) To interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7.

* * * * *

(5) To refuse to bargain collectively with the representatives of his employees, subject to the provisions of Section 9 (a).

* * * * *

SEC. 10. (e) The Board shall have power to petition any circuit court of appeals of the United States (including the Court of Appeals of the District of Columbia), or if all the circuit courts of appeals to which application may be made are in vacation, any district court of the United States (including the Supreme Court of the District of Columbia), within any circuit or district, respectively, wherein the unfair labor practice in question occurred or wherein such

person resides or transacts business, for the enforcement of such order and for appropriate temporary relief or restraining order, and shall certify and file in the court a transcript of the entire record in the proceeding, including the pleadings and testimony upon which such order was entered and the findings and order of the Board. Upon such filing, the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to grant such temporary relief or restraining order as it deems just and proper, and to make and enter upon the pleadings, testimony, and proceedings set forth in such transcript a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board. * * * The jurisdiction of the court shall be exclusive and its judgment and decree shall be final, except that the same shall be subject to review by the appropriate circuit court of appeals if application was made to the district court as hereinabove provided, and by the Supreme Court of the United States upon writ of certiorari or certification as provided in sections 239 and 240 of the Judicial Code, as amended (U. S. C., title 28, secs. 346 and 347).

(f) Any person aggrieved by a final order of the Board granting or denying in whole or in part the relief sought may obtain a review of such order in any circuit court of appeals of the United States in the circuit wherein the unfair labor practice in question was alleged to have been engaged in or wherein such person resides or transacts business, or in the Court of Ap-

peals of the District of Columbia, by filing in such a court a written petition praying that the order of the Board be modified or set aside. A copy of such petition shall be forthwith served upon the Board, and thereupon the aggrieved party shall file in the court a transcript of the entire record in the proceeding, certified by the Board, including the pleading and testimony upon which the order complained of was entered and the findings and order of the Board. Upon such filing, the court shall proceed in the same manner as in the case of an application by the Board under subsection (e), and shall have the same exclusive jurisdiction to grant to the Board such temporary relief or restraining order as it deems just and proper, and in like manner to make and enter a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board; and the findings of the Board as to the facts, if supported by evidence, shall in like manner be conclusive.

2. The relevant provisions of the Labor Management Relations Act of 1947 (Public Law 101, 80th Cong., 1st Sess., c. 120) are as follows:

SEC. 101. The National Labor Relations Act is hereby amended to read as follows:

* * * * *

"SEC. 2. When used in this Act—

* * * * *

"(3) The term 'employee' shall include any employee, * * * but shall not include any individual employed * * * as a supervisor, * * *.

* * * * *

"(11) The term 'supervisor' means any

individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

* * * * *

"SEC. 10. * * * (e) The Board shall have power to petition any circuit court of appeals of the United States (including the United States Court of Appeals for the District of Columbia), or if all the circuit courts of appeals to which application may be made are in vacation, any district court of the United States (including the District Court of the United States for the District of Columbia), within any circuit or district, respectively, wherein the unfair labor practice in question occurred or wherein such person resides or transacts business, for the enforcement of such order and for appropriate temporary relief or restraining order, and shall certify and file in the court a transcript of the entire record in the proceedings, including the pleadings and testimony upon which such order was entered and the findings and order of the Board. Upon such filing, the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to grant such temporary relief or restraining order as it deems just and proper, and to make and enter upon the pleadings, testimony, and proceedings set

forth in such transcript a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board. * * * The jurisdiction of the court shall be exclusive and its judgment and decree shall be final, except that the same shall be subject to review by the appropriate circuit court of appeals if application was made to the district court as hereinabove provided, and by the Supreme Court of the United States upon writ of certiorari or certification as provided in sections 239 and 240 of the Judicial Code, as amended (U. S. C., title 28, secs. 346 and 347).

"(f) Any person aggrieved by a final order of the Board granting or denying in whole or in part the relief sought may obtain a review of such order in any circuit court of appeals of the United States in the circuit wherein the unfair labor practice in question was alleged to have been engaged in or wherein such person resides or transacts business, or in the United States Court of Appeals for the District of Columbia, by filing in such court a written petition praying that the order of the Board be modified or set aside. A copy of such petition shall be forthwith served upon the Board, and thereupon the aggrieved party shall file in the court a transcript of the entire record in the proceeding, certified by the Board, including the pleading and testimony upon which the order complained of was entered, and the findings and order of the Board. Upon such filing, the court shall proceed in the same manner as in the case of an application by the Board under subsection (e), and shall have the same exclusive jurisdiction to grant to the Board such temporary relief or re-

straining order as it deems just and proper, and in like manner to make and enter a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board; the findings of the Board with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall in like manner be conclusive.

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"SEC. 14. (a) Nothing herein shall prohibit any individual employed as a supervisor from becoming or remaining a member of a labor organization, but no employer subject to this Act shall be compelled to deem individuals defined herein as supervisors as employees for the purpose of any law, either national or local, relating to collective bargaining."

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SEC. 103. No provisions of this title shall affect any certification of representatives or any determination as to the appropriate collective-bargaining unit, which was made under section 9 of the National Labor Relations Act prior to the effective date of this title until one year after the date of such certification or if, in respect of any such certification, a collective-bargaining contract was entered into prior to the effective date of this title, until the end of the contract period or until one year after such date, whichever first occurs.

SEC. 104. The amendments made by this title shall take effect sixty days after the date of the enactment of this Act, except that the authority of the President to appoint certain officers conferred upon him by section 3 of the National Labor Relations Act as amended by this title may be exercised forthwith.

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